Reprinted
February 5, 2002

SENATE BILL No. 371

DIGEST OF SB 371 (Updated February 4, 2002 4:39 PM - DI 105)

Citations Affected: IC 12-7; IC 12-15.

Synopsis: Medicaid liens and nonprobate assets. Provides that a trust, life insurance policy, or prepaid funeral agreement is not exempt as a resource in determining Medicaid eligibility unless amounts remaining after delivery of services are payable to the office of Medicaid policy and planning (OMPP) or the applicant's or recipient's estate. Authorizes the OMPP to place a lien on a Medicaid recipient's real property if the office determines that the recipient will not return to live in the property. Provides that the OMPP may not obtain a lien or enforce a lien in certain circumstances. Provides that the OMPP may not enforce a lien against property with a value equal to or less than $75,000. Provides that a lien obtained by the OMPP is subordinate to a security interest of a financial institution in certain circumstances. Provides that the OMPP, for assets not included in a probate estate, may enforce its claim only to the extent that the value of property exceeds $75,000. Provides limitations on the liability of a nonprobate tranferee who receives property from a recipient. Provides that enforcement of a claim against assets not in a probate estate must be commenced not later than twelve months after the decedent's death.

Effective: May 1, 2002; July 1, 2002; January 1, 2003.

Miller, Kenley

January 10, 2002, read first time and referred to Committee on Judiciary.
January 31, 2002, amended, reported favorably — Do Pass.
February 4, 2002, read second time, amended, ordered engrossed.

Reprinted
February 5, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

SENATE BILL No. 371

A BILL FOR AN ACT to amend the Indiana Code concerning Medicaid.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 12-7-2-128.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: **Sec. 128.5. "Medical institution", for purposes of IC 12-15-8.5, has the meaning set forth in IC 12-15-8.5-1.**

SECTION 2. IC 12-15-2-17, AS AMENDED BY P.L.272-1999, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 17. (a) Except as provided in ~~subsection~~ **subsections** (b) **and (d)**, if an applicant for or a recipient of Medicaid:

(1) establishes one (1) irrevocable trust that has a value of not more than ten thousand dollars ($10,000), exclusive of interest, and is established for the sole purpose of providing money for the burial of the applicant or recipient;

(2) enters into an irrevocable prepaid funeral agreement having a value of not more than ten thousand dollars ($10,000); or

(3) owns a life insurance policy with a face value of not more than ten thousand dollars ($10,000) and with respect to which

provision is made to pay not more than ten thousand dollars ($10,000) toward the applicant's or recipient's funeral expenses; the value of the trust, prepaid funeral agreement, or life insurance policy may not be considered as a resource in determining the applicant's or recipient's eligibility for Medicaid.

(b) ~~If~~ **Subject to subsection (d), if** an applicant for or a recipient of Medicaid establishes an irrevocable trust or escrow under IC 30-2-13, the entire value of the trust or escrow may not be considered as a resource in determining the applicant's or recipient's eligibility for Medicaid.

(c) If an applicant for or a recipient of Medicaid owns resources described in subsection (a) and the total value of those resources is more than ten thousand dollars ($10,000), the value of those resources that is more than ten thousand dollars ($10,000) may be considered as a resource in determining the applicant's or recipient's eligibility for Medicaid.

(d) In order for a trust, life insurance policy, or prepaid funeral agreement to be exempt as a resource in determining an applicant's or recipient's eligibility for Medicaid under this section, the applicant or recipient must designate the office or the applicant's or recipient's estate to receive any amounts remaining after delivery of all services and merchandise under the contract as reimbursement for Medicaid assistance provided to the applicant or recipient after age fifty-five (55). The office may receive funds under this subsection only to the extent permitted by 42 U.S.C. 1396p.

SECTION 3. IC 12-15-8.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]:

Chapter 8.5. Liens on Real Property of Medicaid Recipients

Sec. 1. As used in this chapter, "medical institution " means any of the following:

(1) A hospital.

(2) A nursing facility.

(3) An intermediate care facility for the mentally retarded.

Sec. 2. Subject to section 10 of this chapter, when the office, in accordance with 42 U.S.C. 1396p, determines that a Medicaid recipient who resides in a medical institution cannot reasonably be expected to be discharged from a medical institution and return home, the office may obtain a lien on the Medicaid recipient's real property for the cost of all Medicaid expenditures made on behalf of the recipient.

Sec. 3. The office may not obtain a lien under this chapter if any of the following persons lawfully reside in the home of the Medicaid recipient who resides in the medical institution:

(1) The Medicaid recipient's spouse.

(2) The Medicaid recipient's child who is:

(A) less than twenty-one (21) years of age; or

(B) disabled as defined by the federal Supplemental Security Income program.

(3) The Medicaid recipient's sibling who has an ownership interest in the home and who has lived in the home continuously beginning at least twelve (12) months before the recipient was admitted to the medical institution.

(4) The Medicaid recipient's parent.

(5) An individual, other than a paid caregiver, who:

(A) was continuously residing in the recipient's home for a period of at least two (2) years immediately prior to the date of the recipient's admission to the nursing facility; and

(B) establishes to the satisfaction of the office that the person provided care to the recipient enabling the recipient to reside in the recipient's home rather than in a medical institution.

Sec. 4. Before obtaining a lien on a Medicaid recipient's real property under this chapter, the office shall notify in writing the Medicaid recipient or the Medicaid recipient's authorized representative, if applicable, of the following:

(1) The office's determination that the Medicaid recipient cannot reasonably be expected to be discharged from the medical institution.

(2) The office's intent to impose a lien on the Medicaid recipient's home.

(3) The Medicaid recipient's right to a hearing under IC 12-15-28 upon the Medicaid recipient's request regarding whether the requirements for the imposition of a lien are satisfied. No lien shall be filed until the hearing process is completed if a hearing is requested.

Sec. 5. (a) The office shall obtain a lien under this chapter by filing a notice of lien with the recorder of the county in which the real property subject to the lien is located. The notice shall be filed prior to the recipient's death and shall include the following:

(1) The name and place of residence of the individual against whose property the lien is asserted.

(2) A legal description of the real property subject to the lien.

(b) Upon the office's request, the county auditor or assessor of a county shall furnish the office with the legal description of any property in the county registered to the recipient.

(c) The office shall file one (1) copy of the notice of lien with the county office of family and children in the county in which the real property is located. The county office of family and children shall retain a copy of the notice with the county office's records.

(d) The office shall provide one (1) copy of the notice of lien to the recipient or the Medicaid recipient's authorized representative, if applicable, whose real property is affected.

Sec. 6. (a) Beginning on the date on which a notice of lien is recorded in the office of the county recorder under section 5 of this chapter, the notice of lien:

(1) constitutes due notice of a lien against the Medicaid recipient's real property for any amount then recoverable and any amount that becomes recoverable under this article; and

(2) gives a specific lien in favor of the office.

(b) The lien continues from the date of filing the lien until the lien is satisfied or released.

Sec. 7. The office may bring proceedings in foreclosure on a lien arising under this chapter:

(1) during the lifetime of the Medicaid recipient if the Medicaid recipient or a person acting on behalf of the Medicaid recipient sells the property; or

(2) upon the death of the Medicaid recipient.

Sec. 8. (a) The office may not enforce a lien under this chapter if the Medicaid recipient is survived by any of the following:

(1) The recipient's spouse.

(2) The recipient's child who is:

(A) less than twenty-one (21) years of age; or

(B) disabled as defined by the federal Supplemental Security Income program.

(3) The recipient's parent.

(b) The office may not enforce a lien under this chapter as long as any of the following individuals reside in the home:

(1) The recipient's child of any age if the child:

(A) resided in the home for at least twenty-four (24) months before the Medicaid recipient was admitted to the medical institution;

(B) provided care to the Medicaid recipient that delayed the Medicaid recipient's admission to the medical

institution; and

(C) has resided in the home on a continuous basis since the date of the individual's admission to the medical institution.

(2) The Medicaid recipient's sibling who has an ownership interest in the home and who has lived in the home continuously beginning at least twelve (12) months before the Medicaid recipient was admitted to the medical institution.

Sec. 9. (a) The office shall release a lien imposed under this chapter within ten (10) business days after the county office of family and children receives notice that the Medicaid recipient:

(1) was discharged from the medical institution; and

(2) is living in the home.

(b) The county recorder shall waive the filing fee for the filing of a release made under this section.

(c) If the property subject to the lien is sold, the office shall release its lien at the closing, and the lien shall attach to the net proceeds of the sale.

Sec. 10. (a) The office may not enforce a lien against property with a value equal to or less than seventy-five thousand dollars ($75,000.00). If the value of the property subject to the lien exceeds seventy-five thousand dollars ($75,000.00), the value of the property equal to or less than seventy-five thousand dollars ($75,000.00) is exempt from the lien.

(b) The office shall adopt rules under IC 4-22-2 to determine the average value of a homestead in Indiana.

(c) This section expires January 1, 2008.

Sec. 11. (a) As used in this section "financial institution" means a bank, a trust company, a corporate fiduciary, a savings association, a credit union, a savings bank, a bank of discount and deposit, or an industrial loan and investment company organized or reorganized under the laws of this state, another state (as defined in IC 28-2-17-19), or United States law. The term also includes a consumer finance institution licensed to make supervised or regulated loans under IC 24-4.5.

(b) A lien obtained under this chapter is subordinate to the security interest of a financial institution that loans money for any of the following purposes:

(1) The payment of taxes, insurance, maintenance, and repairs in order to preserve and maintain the property.

(2) Operating capital for the operation of a farm, business, or income producing real property.

(3) The payment of medical, dental, or optical expenses incurred by the recipient, the recipient's spouse, a dependent parent, or a child who is less than twenty-one (21) years of age or who is disabled under criteria established by the federal Supplemental Security Income program.

(4) The reasonable costs and expenses for the support, maintenance, comfort, and education of the recipient's spouse, a dependent parent, or a child who is less than twenty-one (21) years of age or who is disabled under criteria established by the federal Supplemental Security Income program.

SECTION 4. IC 12-15-9-0.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 0.5. As used in this chapter, "estate" includes:

(1) all real and personal property and other assets included within an individual's probate estate; **and**

(2) any other real and personal property and other assets in which the individual had legal title or an interest at the time of death to the extent of the individual's interest, including assets conveyed to a survivor, heir, or assign of the deceased individual through any of the following:

(A) Joint tenancy.

(B) Tenancy in common.

(C) Survivorship.

(D) Life estate.

(E) Trust, except for a trust:

(i) that meets the requirements of 42 U.S.C. 1396p(d)(4); or

(ii) that is funded with assets of a person other than the individual or the individual's spouse.

(F) Any other arrangement.

SECTION 5. IC 12-15-9-0.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 0.6. (a) This section applies only to assets that are not included within an individual's probate estate.**

(b) The office may enforce its claim only to the extent that the value of the property subject to the claim exceeds seventy-five thousand dollars ($75,000.00).

(c) The office shall adopt rules under IC 4-22-2 to determine the average value of a homestead in Indiana.

(d) This section expires January 1, 2008.

SECTION 6. IC 12-15-9-0.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

1, 2002]: **Sec. 0.7. (a) This section applies only to assets that are not included within an individual's probate estate.**

(b) As used in this section "nonprobate transferee" means a person receiving property described in section 0.5 of this chapter.

(c) The liability of a nonprobate transferee for the office's claim under this chapter may not:

(1) exceed the value of the nonprobate transfers received or controlled by the transferee; and

(2) include the net contributions of the transferee.

(d) Upon notice to a nonprobate transferee, the office may enforce its claim in a proceeding in Indiana in the county in which the:

(1) transfer occurred;

(2) transferee is located; or

(3) probate action is pending.

(e) Enforcement of a claim against assets that are not included within an individual's probate estate must be commenced not later than twelve (12) months after the decedent's death.

SECTION 7. IC 12-15-9-0.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE MAY 1, 2002]: **Sec. 0.8. Any nonprobate assets:**

(1) that the office determined were exempt or unavailable assets; or

(2) that were transferred out of the probate estate;

before May 1, 2002, may not be included in the definition of estate under this chapter.

SECTION 8. IC 12-15-28-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 1. An applicant for or a recipient of Medicaid may appeal to the office if one (1) of the following occurs:

(1) An application or a request is not acted upon by the county office within a reasonable time after the application or request is filed.

(2) The application is denied.

(3) The applicant or recipient is dissatisfied with the action of the county office.

(4) The recipient is dissatisfied with a determination made by the office under IC 12-15-8.5.

SENATE MOTION

Mr. President: I move that Senator Kenley be added as second author of Senate Bill 371.

MILLER

COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 371, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 15, delete "When" and insert "**Subject to section 10 of this chapter, when**".

Page 2, line 1, delete "shall" and insert "**may**".

Page 2, between lines 15 and 16, begin a new line block indented and insert:

"**(4) The Medicaid recipient's parent.**

(5) An individual, other than a paid caregiver, who:

(A) was continuously residing in the recipient's home for a period of at least two (2) years immediately prior to the date of the recipient's admission to the nursing facility; and

(B) establishes to the satisfaction of the office that the person provided care to the recipient enabling the recipient to reside in the recipient's home rather than in a medical institution.".

Page 2, line 18, delete ", the Medicaid recipient's guardian, the".

Page 2, line 19, delete "Medicaid recipient's attorney in fact,".

Page 2, line 20, after "representative," insert "**if applicable,**".

Page 2, line 32, after "shall" insert "**be filed prior to the recipient's death and shall**".

Page 3, line 14, after "chapter" insert "**:**

(1)".

Page 3, line 16, delete "." and insert "**; or**

(2) upon the death of the Medicaid recipient.".

Page 3, between lines 23 and 24, begin a new line block indented and insert:

"**(3) The recipient's parent.**".

Page 4, between lines 4 and 5, begin a new paragraph and insert:

"**(c) If the property subject to the lien is sold, the office shall release its lien at the closing, and the lien shall attach to the net proceeds of the sale.**

Sec. 10. (a) The office may not enforce a lien against property with a value equal to or less than the statewide average value of a homestead on the date of foreclosure or the recipient's death, whichever occurs first. If the value of the property subject to the lien exceeds the statewide average homestead value, the value of the property equal to the statewide average homestead value is

exempt from the lien.

(b) The office shall adopt rules under IC 4-22-2 to determine the average value of a homestead in Indiana.

(c) This section expires January 1, 2008.

Sec. 11. (a) As used in this section "financial institution" means a bank, a trust company, a corporate fiduciary, a savings association, a credit union, a savings bank, a bank of discount and deposit, or an industrial loan and investment company organized or reorganized under the laws of this state, another state (as defined in IC 28-2-17-19), or United States law. The term also includes a consumer finance institution licensed to make supervised or regulated loans under IC 24-4.5.

(b) A lien obtained under this chapter is subordinate to the security interest of a financial institution that loans money for any of the following purposes:

(1) The payment of taxes, insurance, maintenance, and repairs in order to preserve and maintain the property.

(2) Operating capital for the operation of a farm, business, or income producing real property.

(3) The payment of medical, dental, or optical expenses incurred by the recipient, the recipient's spouse, a dependent parent, or a child who is less than twenty-one (21) years of age or who is disabled under criteria established by the federal Supplemental Security Income program.

(4) The reasonable costs and expenses for the support, maintenance, comfort, and education of the recipient's spouse, a dependent parent, or a child who is less than twenty-one (21) years of age or who is disabled under criteria established by the federal Supplemental Security Income program.".

Page 4, line 12, after "death" insert "**to the extent of the individual's interest**".

Page 4, line 18, delete "." and insert "**, except for a trust:**

(i) that meets the requirements of 42 U.S.C. 1396p(d)(4); or

(ii) that is funded with assets of a person other than the individual or the individual's spouse.".

Page 4, between lines 19 and 20, begin a new paragraph and insert:

"SECTION 4. IC 12-15-9-0.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 0.6. (a) This section applies only to assets that are not included within an individual's probate estate.**

(b) The office may enforce its claim only to the extent that the

value of the property subject to the claim exceeds the statewide average value of a homestead in Indiana.

(c) The office shall adopt rules under IC 4-22-2 to determine the average value of a homestead in Indiana.

(d) This section expires January 1, 2008.

SECTION 5. IC 12-15-9-0.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 0.7. (a) This section applies only to assets that are not included within an individual's probate estate.**

(b) As used in this section "nonprobate transferee" means a person receiving property described in section 0.5 of this chapter.

(c) The liability of a nonprobate transferee for the office's claim under this chapter may not:

(1) exceed the value of the nonprobate transfers received or controlled by the transferee; and

(2) include the net contributions of the transferee.

(d) Upon notice to a nonprobate transferee, the office may enforce its claim in a proceeding in Indiana in the county in which the:

(1) transfer occurred;

(2) transferee is located; or

(3) probate action is pending.

(e) Enforcement of a claim against assets that are not included within an individual's probate estate must be commenced not later than twelve (12) months after the decedent's death.

SECTION 6. IC 12-15-9-0.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE MAY 1, 2002]: **Sec. 0.8. Any nonprobate assets:**

(1) that the office determined were exempt or unavailable assets; or

(2) that were transferred out of the probate estate;

before May 1, 2002, may not be included in the definition of estate under this chapter.".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 371 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 0.

SENATE MOTION

Mr. President: I move that Senate Bill 371 be amended to read as follows:

Page 1, between lines 5 and 6, begin a new paragraph and insert:

"SECTION 2. IC 12-15-2-17, AS AMENDED BY P.L.272-1999, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 17. (a) Except as provided in ~~subsection~~ **subsections** (b) **and (d)**, if an applicant for or a recipient of Medicaid:

(1) establishes one (1) irrevocable trust that has a value of not more than ten thousand dollars ($10,000), exclusive of interest, and is established for the sole purpose of providing money for the burial of the applicant or recipient;

(2) enters into an irrevocable prepaid funeral agreement having a value of not more than ten thousand dollars ($10,000); or

(3) owns a life insurance policy with a face value of not more than ten thousand dollars ($10,000) and with respect to which provision is made to pay not more than ten thousand dollars ($10,000) toward the applicant's or recipient's funeral expenses;

the value of the trust, prepaid funeral agreement, or life insurance policy may not be considered as a resource in determining the applicant's or recipient's eligibility for Medicaid.

(b) ~~If~~ **Subject to subsection (d), if** an applicant for or a recipient of Medicaid establishes an irrevocable trust or escrow under IC 30-2-13, the entire value of the trust or escrow may not be considered as a resource in determining the applicant's or recipient's eligibility for Medicaid.

(c) If an applicant for or a recipient of Medicaid owns resources described in subsection (a) and the total value of those resources is more than ten thousand dollars ($10,000), the value of those resources that is more than ten thousand dollars ($10,000) may be considered as a resource in determining the applicant's or recipient's eligibility for Medicaid.

(d) In order for a trust, life insurance policy, or prepaid funeral agreement to be exempt as a resource in determining an applicant's or recipient's eligibility for Medicaid under this section, the applicant or recipient must designate the office or the applicant's or recipient's estate to receive any amounts remaining after delivery of all services and merchandise under the contract as reimbursement for Medicaid assistance provided to the applicant or recipient after age fifty-five (55). The office may receive funds under this subsection only to the extent permitted by 42 U.S.C. 1396p.".

Page 2, line 39, after "satisfied." insert "**No lien shall be filed until the hearing process is completed if a hearing is requested.**".

Page 3, line 13, after "recipient" insert "**or the Medicaid recipient's authorized representative, if applicable,**".

Page 4, line 22, after "than", delete "the statewide average value of a" and insert "**seventy-five thousand dollars ($75,000.00).**"

Page 4, delete line 23.

Page 4, line 24, delete "whichever occurs first.".

Page 4, line 25, after "exceeds" delete "the statewide average homestead value," and insert "**seventy-five thousand dollars ($75,000.00),**".

Page 4, line 26, after "property" delete "the statewide average homestead value" and insert "**or less than seventy-five thousand dollars ($75,000.00)**".

Page 5, line 39, after "exceeds" delete "the statewide" and insert "**seventy-five thousand dollars ($75,000.00)**".

Page 5, delete line 40.

(Reference is to SB 371 as printed February 1, 2002.)

KENLEY